

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**RODNEY A. BALLARD,**

**Plaintiff,**

**v.**

**ATTORNEY GENERAL JON BRUNING,**

**individually and in his official capacity,**

**GOVERNOR DAVID HEINEMAN,**

**individually and in his official capacity,**

**LINCOLN COUNTY ATTORNEY**

**JEFFREY MEYER, Individually and in his**

**official capacity, and TROOPER No. 371,**

**individually and in his official capacity,**

**Defendants.**

**4:07CV3122**

**ORDER**

This matter is before the court on the motion [15] of defendants Bruning, Heineman, and Trooper No. 371 to stay the progression of this case pending the district court's ruling on their Motion to Dismiss [17]. As a ground for dismissal, the movants contend they have sovereign and eleventh amendment immunity with respect to the plaintiff's "official capacity" claims. I note that defendant Jeffrey Meyer has also filed a motion to dismiss [9], raising issues of absolute prosecutorial immunity and qualified immunity.

Unless the complaint states a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. *See Mitchell v. Forsyth*, 472 U.S. 511 (1985). Upon review of the file, I find that the motion should be granted, without prejudice to plaintiff filing, if necessary, a motion for leave to conduct limited discovery on the issue of qualified immunity.

**IT IS SO ORDERED.**

**DATED July 2, 2007.**

**BY THE COURT:**

**s/ F.A. Gossett**

**United States Magistrate Judge**